

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JACKIE CARTER,

Plaintiff,

v.

OPINION AND ORDER

12-cv-574-wmc

MICHAEL MIESNER, JANEL NICKEL,  
DONALD MORGAN, LT. SCHOENBERG,  
SGT. DONOVAN, SGT. BANDEKO,  
JOANE LANE, MARY LIESER,  
DALIA SULIENE and KAREN ANDERSON,

Defendants.

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In this action, plaintiff Jackie Carter is suing prison administrators, correctional officers, medical staff and complaint examiners for a variety of constitutional violations. Carter requests leave to proceed *in forma pauperis*. He has also filed motions to appoint counsel and for preliminary injunctive relief. The case is now pending before the court for screening pursuant to 28 U.S.C. § 1915A. Under this statute, the court must dismiss the complaint if it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune. *Id.*

For reasons set forth briefly below, the court concludes that Carter may proceed on his Eighth Amendment medical care and conditions of confinement claims, but may not proceed on his First Amendment retaliation claims. The court will also deny his motions for preliminary injunctive relief and appointment of counsel.

## ALLEGATIONS OF FACT

In addressing any *pro se* litigant's complaint, the court must read the allegations generously, and hold the complaint "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court assumes for purposes of this screening order, the following alleged facts.

- Plaintiff Jackie Carter is currently confined at the Columbia Correctional Institution.
- Carter wrote to defendant Karen Anderson (who works in the health unit) and Dr. Dalia Suliene about his medications being taken from him. Anderson blamed defendant Security Director Janel Nickel, who denied it. The problem has not been corrected.
- In June 2012, Suliene completely discontinued Carter's pain medication, which caused Carter withdrawal symptoms like cardiac problems, vomiting and defecating blood and kidney and back problems. Carter wrote to Suliene and Anderson for help, but they did nothing.
- Suliene and Anderson refused to follow a neurologist's advice in treating his neuropathy.
- Defendants Sgt. Bendeko, Sgt. Donovan, Lt. Schoenberg and Donald Morgan denied Carter his prescribed footwear. Nickel told Carter not to write her.
- Defendant Bendeko, the laundry sergeant, denied Carter underwear, pants, shirts and socks for over a year.
- Defendant Michael Miesner allowed this to happen.
- Carter's medications, clothes and bedding were taken in retaliation for Carter's previous lawsuits, particularly for Carter's attempts to inform this court about the conditions of his confinement.
- Defendants Joane Lane and Mary Lieser refused to accept or process Carter's grievances.

## OPINION

### I. Medical Care

Carter brings Eighth Amendment medical care claims against various defendants. To state an Eighth Amendment medical care claim, a prisoner must allege facts from which it can be inferred that he had a “serious medical need” and that prison officials were “deliberately indifferent” to this need. *Estelle v. Gamble*, 429 U.S. 97, 103, 104 (1976). A “serious medical need” may be a condition that a doctor has recognized as needing treatment or one for which the necessity of treatment would be obvious to a lay person. *Johnson v. Snyder*, 444 F.3d 579, 584-85 (7th Cir. 2006). A medical need may be serious if it is life-threatening, carries risks of permanent serious impairment if left untreated, results in needless pain and suffering, “significantly affects an individual's daily activities,” or otherwise subjects the prisoner to a substantial risk of serious harm. *Farmer*, 511 U.S. at 847; *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998); *Gutierrez v. Peters*, 111 F.3d 1364, 1371-73 (7th Cir. 1997). “Deliberate indifference” means that defendant was aware a prisoner needed medical treatment but disregarded the risk by failing to take reasonable measures. *Forbes v. Edgar*, 112 F.3d 262, 266 (7th Cir. 1997). A prison doctor's disregard of a specialist's recommendations may allow an inference of deliberate indifference. *Gil v. Reed*, 381 F.3d 649, 663-64 (7th Cir. 2004).

Carter alleges that defendants Anderson, Suliene and Nickel either took or discontinued his medication or failed to stop them from being taken after being alerted to the problem, resulting in cardiac problems, vomiting and defecating blood and kidney and back problems. Carter also alleges that Suliene and Anderson refused to follow a

neurologist's advice in treating his neuropathy. Finally, Carter alleges that he is in severe pain from ankle and foot ailments, but that defendants Sgt. Bendeko, Sgt. Donovan, Lt. Schoenberg and Donald Morgan denied Carter his prescribed footwear. Each of these allegations is sufficient to sustain an Eighth Amendment claim at this point in the proceedings.

## **II. Conditions of Confinement**

The Eighth Amendment's prohibition against cruel and unusual punishment imposes upon prison officials the duty to provide prisoners "humane conditions of confinement." *Farmer*, 511 U.S. at 832. To constitute cruel and unusual punishment, conditions of confinement must be extreme. General "lack of due care" by prison officials will never rise to the level of an Eighth Amendment violation because "it is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause." *Whitley v. Albers*, 475 U.S. 312, 319 (1986).

To demonstrate that prison conditions violated the Eighth Amendment, a plaintiff must allege facts that satisfy a test involving both an objective and subjective component. *Lunsford v. Bennett*, 17 F.3d 1574, 1579 (7th Cir. 1994). The objective analysis focuses on whether prison conditions were sufficiently serious so that "a prison official's act or omission results in the denial of the minimal civilized measure of life's necessities," *Farmer*, 511 U.S. at 834, or "exceeded contemporary bounds of decency of a mature, civilized society." *Lunsford*, 17 F.3d at 1579. The subjective component requires an

allegation that prison officials acted wantonly and with deliberate indifference to a risk of serious harm to plaintiff. *Id.*

Although Carter's allegations are somewhat vague, the court understands him to be saying that defendant laundry sergeant Bendeko withheld clothing from him for over a year (it is unclear whether Carter has had any clothing or has been forced to wear old clothing). At this early stage of the litigation, Carter's allegations are sufficient to state an Eighth Amendment claim for denial of clothing.

### **III. Retaliation**

Next, Carter alleges that defendants undertook all of these actions to retaliate against him for filing other lawsuits against them, particularly the numerous other lawsuits he has filed in this court. To state a claim for retaliation, a plaintiff must identify (1) the constitutionally protected activity in which he was engaged; (2) one or more retaliatory actions taken by each defendant that would deter a person of "ordinary firmness" from engaging in the protected activity; and (3) sufficient facts to make it plausible to infer that the plaintiff's protected activity was one of the reasons defendants took the action they did against him. *Bridges v. Gilbert*, 557 F.3d 541, 556 (7th Cir. 2009).

At this point, Carter's allegations are too vague to state retaliation claims. He states that all of the defendants' misconduct is tied to retaliation but he does not provide any specific allegations that defendants meant to retaliate against him or even explain how defendants were aware of the lawsuits. His allegations consist of no more than

speculation that defendants undertook these actions because of his lawsuits. Accordingly, Carter will not be allowed to proceed on retaliation claims.

#### **IV. Supervisors/Complaint Examiners**

Carter brings claims against defendants Nickel and Miesner for failing to take action after learning that he did not have his prescribed shoes. He also states that defendant complaint examiners Mary Lieser and Joane Lane would not process his grievances about the underlying claims in this case. At this point in the proceedings, Carter's allegations are sufficient to state claims against these defendants. As the case proceeds, however, he will also have to show that each defendant had a responsibility to respond to his complaints, yet failed to help him. *See Burks v. Raemisch*, 555 F.3d 592, 596 (7th Cir. 2009) (rejecting "contention that any public employee who knows (or should know) about a wrong must do something to fix it").

#### **V. Other Motions**

Carter has filed three motions for preliminary injunctive relief regarding his claims. The second two will be denied as duplicative and Carter will be given an opportunity to supplement his first motion. Under this court's procedures for obtaining a preliminary injunction, a copy of which is attached to this order (and as Carter should know full well from similar motions in his other lawsuits before this court), he must file with the court and serve on defendants a brief stating the legal grounds supporting his claim, proposed findings of fact and any evidence he has to support his request for this

extraordinary relief. The court will review the parties' preliminary injunction submissions before deciding whether a hearing will be necessary.

Based on past proceedings, Carter should also be aware that the bar for obtaining a preliminary injunction is significantly higher than it is for obtaining leave to proceed. In his proposed findings of fact, Carter will have to lay out the facts of his case in detail, identifying the specific causes of his problems, when and how he sought a remedy and how defendants responded. Carter will also have to show that he has some likelihood of success on the merits of his claim and that irreparable harm will result if the requested preliminary relief is denied. If he makes both showings, the court will move on to consider the balance of hardships between Carter and defendants and whether a preliminary injunction would be in the public interest, considering all four factors under a "sliding scale." *In re Forty-Eight Insulations, Inc.*, 115 F.3d 1294, 1300 (7th Cir. 1997).

Carter has also filed several motions for appointment of counsel. As discussed in Carter's previous cases, however, the court recruited counsel for the purpose of consulting with him about similar claims raised in several of his pending cases, as well as held a hearing about his various claims. Ultimately, the court concluded that it was appropriate for Carter to proceed *pro se* in each of his lawsuits. *See Carter v. Radtke*, Case No. 09-cv-437-wmc, slip op. (Dec. 2, 2011). For the same reasons, the court will deny his motions for appointment of counsel here.

## **VI. Consolidation of Cases**

Pursuant to the June 6, 2013 order entered in each of Carter's remaining cases (dkt. #19), this case has been consolidated with case nos. 10-cv-280-wmc and 11-cv-110-wmc and will proceed under the schedule set in the '280 case.

### **ORDER**

IT IS ORDERED that:

- (1) Plaintiff Jackie Carter is GRANTED leave to proceed on the following claims:
  - (a) Eighth Amendment medical care claims against defendants Anderson, Suliene and Nickel for taking or discontinuing his medication or for failing to stop the confiscation of medication.
  - (b) Eighth Amendment medical care claims against Suliene and Anderson for refusing to follow a neurologist's advice in treating his neuropathy.
  - (c) Eighth Amendment medical care claims against defendants Sgt. Bendeko, Sgt. Donovan, Lt. Schoenberg and Donald Morgan for denying Carter his prescribed footwear.
  - (d) an Eighth Amendment claim against Bendeko for withholding clothing from plaintiff.
  - (e) claims against defendants Nickel and Miesner for failing to take action after they knew that plaintiff did not have his prescribed shoes, and against defendant complaint examiners Lieser and Lane for failing to process his grievances.
- (2) Plaintiff is DENIED leave to proceed on his claims that defendants retaliated against him.
- (3) Plaintiff may have until June 20, 2013, in which to file a brief, proposed findings of fact and evidentiary materials in support of his first motion for a preliminary injunction. Defendants may have until the date their answer is due to file materials in response.



- (4) Plaintiff's second two motions for preliminary injunctive relief (dks. #6, 10) are DENIED as duplicative.
- (5) Plaintiff's motions for appointment of counsel (dkt. #2, 5, 10, 13) are DENIED.
- (6) Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's supplemental complaint and this order are being sent today to the Attorney General for service on the defendants. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.
- (7) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- (8) Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 7th day of June, 2013.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge